

MILBERG LLP
Jonathan M. Landers
Matthew Gluck
Brad N. Friedman
Sanford P. Dumain
Jennifer L. Young
One Pennsylvania Plaza
48th Floor
New York, NY 10119
Telephone: (212) 594-5300
Facsimile: (212) 868-1229

SEAGER WEISS LLP
Stephen A. Weiss
Christopher M. Van DeKieft
Parvin Aminolroaya
One William Street
New York, NY 10004
Telephone: (212) 584-0700
Facsimile: (212) 584-0799

Attorneys for the Dolores Hoffman IRA, Morgan Stanley as Custodian

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff,

Adv. Pro. No. 08-01789 (BRL)

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

SIPA Liquidation

Defendant.

OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM

The Dolores Hoffman IRA, Morgan Stanley as Custodian (“Hoffman IRA”), by and through its attorneys, hereby objects to the Notice of Trustee’s Determination of Claim dated December 8, 2009 (“Determination Letter”), attached as Exhibit A, as described herein.

BACKGROUND

1. On December 11, 2008, the above-captioned liquidation proceeding was commenced against BMIS, pursuant to SIPA. *See Order, Securities and Exchange Commission v. Madoff*, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Dkt. No. 4]. Irving Picard was appointed Trustee (“BMIS Trustee”), charged with overseeing the liquidation of BMIS and processing customer claims for money pursuant to SIPA. *Id.*; *see also* 15 U.S.C. 78fff-1(a).

2. The Hoffman IRA is an investor in Jay North Investments and, on information and belief (including information provided by Stanley Chais, principal of The Lambeth Company), Jay North Investments was an investor in The Lambeth Company, which is, upon information and belief, a “customer,” as defined by the Securities Investor Protection Act of 1970 (“SIPA”), of BMIS. Thus, the Hoffman IRA has an interest in certain claims belonging to The Lambeth Company in the BMIS liquidation proceeding.

3. On December 23, 2008, the Court issued an Order directing the Trustee to disseminate notice and claim forms to BMIS customers and setting forth claim-filing deadlines. *See Order* [Dkt. No. 12]. Upon information and belief, the BMIS Trustee disseminated notice and claim forms to BMIS’s customers in accordance with the Court’s Order.

4. The December 23, 2008 Order further provided that, to the extent the BMIS Trustee disagrees with the amount set forth on a customer claim form, the BMIS Trustee “shall notify such claimant by mail of his determination that the claim is disallowed, in whole or in part, *and the reason therefor . . .*” *See Order at 6 (emphasis added)* [Dkt. No. 12].

5. Upon information and belief, The Lambeth Company did not timely file a customer claim form and has not prosecuted its claim in the BMIS liquidation proceeding.

6. On or about June 9, 2009, the Hoffman IRA submitted a customer claim form to SIPC, which was designated as Claim No. 009480 by the BMIS Trustee (“Hoffman IRA Customer Claim”) (Exhibit B).¹

7. On December 8, 2009, the BMIS Trustee sent the Hoffman IRA the Determination Letter disallowing the Hoffman IRA’s claim in its entirety on the basis that “it is not a customer of BLMIS under SIPA as that term is defined at 15 U.S.C. § 78lll(2).” *See* Determination Letter (Exhibit A).

OBJECTION

8. The Hoffman IRA hereby objects to the Determination Letter on the basis that the Hoffman IRA should not be deprived of the opportunity to have its claim addressed simply because The Lambeth Company has not filed a customer claim or has otherwise failed to prosecute or defend any claim against the debtor.

9. First Objection. Normally, bankruptcy law prevents parties whose claims are derived from the claim of a creditor from seeking to recover on such derived claims from the debtor. Such rules are designed to prevent duplicate recoveries arising from what amounts to a single legal claim. *See* Bankruptcy Code §§ 502(e), 509. However, bankruptcy law also recognizes that the derivative claimant should be permitted to file such a claim when the direct creditor fails or refuses to file a claim since, in such cases, there is no risk of a double recovery. For example, bankruptcy law provides that “[i]f a creditor does not timely file a proof of such creditor’s claim, an entity that is liable to such creditor with the debtor, or that has secured such

¹ In accordance with the Court’s Order dated October 20, 2009 [Dkt. No. 533], Claimant’s personal identification data has been redacted from Exhibit B.

creditor, may file a proof of such claim.” See Bankruptcy Code § 501(b); *see also* Fed. R. Bankr. P. 3005(a). These principles apply here and it is only appropriate and equitable that the Hoffman IRA’s customer claim be considered in the place of BMIS customer The Lambeth Company when The Lambeth Company has sat on its own rights, which has, by extension, deprived the Hoffman IRA of its rights. Moreover, there is no danger of double recoveries because The Lambeth Company failed to file its claim by the July 2, 2009 bar date and its claim is thus barred.

10. Second Objection. The BMIS Trustee has encouraged all those who lost money due to the Madoff Ponzi scheme to file customer claim forms. This includes investors such as the Hoffman IRA that invested “indirectly” with BMIS. The BMIS Trustee has clearly contemplated a scenario whereby “indirect” investors, such as the Hoffman IRA, would be entitled to have their claims allowed and/or paid in this proceeding. To the extent that any such “indirect” claims are allowed and/or “indirect” claimants are deemed “customers” under SIPA by virtue of the present statute, any amended statute, any decision or ruling of any administrative agency, any decision or ruling by SIPC or the Madoff Trustee, or any decision or order of any court, it reserves the right to challenge any determination of its claim by the BMIS Trustee.

RELIEF REQUESTED

11. For the reasons stated herein, The Hoffman IRA’s claim should be allowed insofar as it is part of The Lambeth Company’s claim.

12. To the extent the Hoffman IRA’s claim is deemed to be filed on behalf of The Lambeth Company, the Hoffman IRA reserves the right to supplement its claim and submit further objections to any Determination of Claim directed to the Hoffman IRA, including but not

limited to the right to object to the BMIS Trustee's method of calculating "net equity" or other objections to the method by which the BMIS Trustee has calculated the amount of the claim.

13. The Hoffman IRA requests such other relief as may be just and equitable.

CONCLUSION

14. The Hoffman IRA reserves the right to revise, supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of the Hoffman IRA's right to object on any additional grounds.

15. The Hoffman IRA reserves all rights set forth Rule 9014, including, without limitation, rights of discovery. *See Fed. R. Bankr. P. 9014.*

16. The Hoffman IRA reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

17. The Hoffman IRA incorporates by reference all reservations of rights set forth in the Hoffman IRA's Customer Claim.

Dated: January 6, 2010

s/ Jonathan M. Landers
MILBERG LLP
Jonathan M. Landers
Matthew Gluck
Brad N. Friedman
Sanford P. Dumain
Jennifer L. Young
One Pennsylvania Plaza, 48th Fl.
New York, NY 10119
Telephone: (212) 594-5300
Facsimile: (212) 868-1229

SEAGER WEISS LLP
Stephen A. Weiss
Christopher M. Van DeKieft
Parvin Aminolroaya

One William Street
New York, NY 10004
Telephone: (212) 584-0700
Facsimile: (212) 584-0799

*Attorneys for the Dolores Hoffman IRA,
Morgan Stanley as Custodian*